

**Remarks**

Applicants respectfully request reconsideration of the present U.S. Patent application as amended herein. Claims 16 and 37 have been amended to add a period to properly terminate the claim. No claims have been added or canceled. Thus, claims 1-50 remain pending.

**35 U.S.C. §102**

Claims 1-2, 5-13, 16-19, 26-28, 31-34, 37-42, 45-50 stand rejected under §102 as being anticipated by Assisi (U.S. Patent No. 5,696,488). Applicant traverses the rejection.

The §102 rejection comprises a general statement that the above indicated 34 claims are anticipated and supports the rejection with a lengthy excerpt from the Assisi document, followed by a single explanatory paragraph that fails to explain how each and every element of all rejected 34 claims are in fact anticipated by Assisi. Since the Office has failed to cite a reference showing all of the elements of the rejected claims, applicant assumes that the Examiner is taking official notice of the missing elements from an undisclosed source.

Applicant respectfully objects to the taking of official notice, and pursuant to M.P.E.P. § 2144.03, the Applicant traverses the assertion of official notice and requests the Examiner cite a reference that teaches the missing elements. If the Examiner cannot cite a reference that teaches the missing element, applicant respectfully requests that the Examiner provide an affidavit that describes how the missing elements are present in the prior art. If the examiner cannot cite a reference or provide an

affidavit, the Applicant requests withdrawal of the rejection and reconsideration of the rejected claims.

Regarding the rejection of claim 1, this claim recites "receiving by an article associated with an **attendee of an event** an identifier broadcasted by a recording device making a recording of the event, the identifier identifying at least the recording of the event." Assisi does not teach this as Assisi teaches a decedent, **prior** to being deceased, making various recordings while alive that may **later** be provided to one visiting the decedents tombstone. The recited embodiment instead recites receiving an identifier corresponding to a recording being made **during** an event that is provided to an **attendee of the event**.

Thus, assuming for the sake of argument we accept the Office's characterization of going to a cemetery as being an "event" as the term is used in claim 1, the suggested anticipation is **impossible** since the identifier of data to be provided to an Assisi event attendee **cannot** be provided during recording the attended event as recited in claim 1. This impossibility arises, as noted above, since the recording necessarily must be made **before** the decedent has died and one is attending the funeral.

Further, in order to anticipate claim 1, Assisi would have to teach that the tombstone records the funeral and broadcasts an identifier identifying the recording being made. There is no such teaching in Assisi. Instead, as discussed above, the intent in Assisi is for a decedent to prepare the recording in advance of the Assisi funeral event, not for the tombstone to record the funeral. To try to interpret Assisi as recording the decedent's data would result in a macabre scenario in which a decedent

is required, while still alive, to use their future tombstone as a recording device--a scenario thankfully not contemplated by Assisi.

Regarding claim 2, this claim recites "emitting a responsive signal by the article to acknowledge receiving the identifier broadcasted **by the recording device**." While admittedly the Assisi communication system requires some sort of data transfer between the tombstone and an attendee's player, there is no teaching of how this is to accomplished beyond some general reference to "a 'wireless' manner by means of electromagnetic waves." This general reference to using wireless communication can not anticipate the specific feedback system recited in claim 2. And, in particular, since the tombstone was **not** the recording device, Assisi cannot anticipate this claim.

Regarding claim 5 for example, this claim recites: "determining a proximity relationship between the article and the recording device" and "determining whether to store the identifier in the" article's memory "based at least on the determined proximity relationship." Assisi at col. 2 lines 12-14 simply assumes the receiver is carried by a visitor in the vicinity (line 24) of a tombstone. Assuming for the sake of argument the Assisi system transmits an identifier of a recording (which it does **not**), there is nonetheless no teaching of determining whether to store in an attendee's article an identifier of the recording based on whether the article is proximate.

Regarding claim 6, this claim recites "determining a vantage point of the recording device." There is no discussion in Assisi of vantage points, nor of deciding

“whether to store the identifier in the memory... based at least on the determined vantage point” as is recited.

Regarding claims 8, 9 there is no teaching in Assisi of providing the recording to a distributor, nor for providing the distributor with terms for distribution.

Regarding claim 10, this claim cannot be anticipated because the decedent cannot remain anonymous, else it would defeat the purpose of the Assisi system.

Regarding claim 11, as with the discussion above with respect to claim 1, Assisi fails to anticipate interacting with a recorder of an event. For example, Assisi fails to anticipate “receiving a responsive identifier from an entity interested in the recording.” In Assisi interest is **presumed** by virtue of the attendee visiting the tombstone.

Regarding claim 12, there is no teaching in Assisi regarding nearness of an attendee to the recording of the event. The term “recording” in the claim is used in the verb sense, e.g., regarding nearness to device performing the act of recording the event, and not in the noun sense, e.g., nearness to the physical data recording.

Regarding claim 13, there is no teaching regarding offering the recording to interested parties according to “standard distribution terms” as recited—the Assisi tombstone simply provides its recording to whomever is nearby (col. 2 lines 12-24).

Regarding claims 16, 17, there is no teaching in Assisi of the recited providing an identification of the recording that includes a “location component indicating where the

recording occurred” nor is there any teaching of a “second location” and offering recordings based on a relationship between the first and second locations.

Regarding the article of claim 26 et seq., see the above discussion regarding claim 11 et seq. Given the failure of Assisi to anticipate the claims as discussed above, claim series 26-36 will not be addressed further.

Regarding the article of claim 37, this claim has been amended to correct a typographical error in failing to recite “badge means.” Regarding the rejection, however, Applicant submits that as discussed above, Assisi fails to anticipate, among other things, the recited recording means and distribution means.

Regarding the article of claim 41 et seq., see the above discussion regarding claim 1 et seq. Given the failure of Assisi to anticipate the claims as discussed above, claim series 26-36 will not be addressed further.

Regarding the dependent claims rejected under §102 but not specifically addressed above, Applicant submits these claims are allowable for at least the reason as for depending from an allowable base claim.

### **35 U.S.C. §103**

Claims 3-4, 22-25, and 43-44 stand rejected under §103 as being obvious over Assisi in view of DeVito (U.S. Patent No. 5,960,572). Applicant traverses the rejections.

Regarding claim 3, as discussed above for claim 1, Assisi fails to teach or suggest claim 1's recited "receiving by an article associated with an attendee of an event an identifier broadcasted by a recording device making a recording of the event" and consequently Assisi fails to teach claim 3's article being a badge worn by the attendee. The limitations discussed above of Assisi is not cured by DeVito and therefore the suggested combination is not workable to perform the claimed embodiments. Consequently, it is submitted the suggested combination fails to render obvious any of the claimed embodiments.

Regarding claims 22-25, again, Assisi fails to teach the recited recorder, badge, and distributor operating as recited in claim 22. Specific reasons for why / how Assisi fails to teach these limitations have been addressed above with respect to other claims. However, in particular, Applicant notes that Assisi requires the recording to occur before the event since the decedent is required to be alive to make the recordings to be presented at the funeral event. As recited in claim 22, the recording occurs during the event and an identification of the recording is obtained by the recited badge. This is not suggested by Assisi, nor is it suggested or otherwise possible when considered in combination with DeVito. Thus the suggestion combination cannot render these claims obvious as suggested by the Office.

Regarding claim 43, see the discussion above for claim 3, and regarding the rejection of claim 44, there is no teaching in Assisi of issuing tickets to attendees—one does not have to obtain a ticket to attend a funeral. DeVito also fails to teach or suggest

obtaining tickets to an event, and consequently it is submitted the suggested combination cannot render obvious claims 43 or 44.

Applicant also notes that claims 3-4 and 43-44 are allowable for at least the reason as depending from allowable base claims.

Claims 14-15, 20-21, 29-30, and 35-36 stand rejected under §103 as being obvious over Assisi in view of Hicks (U.S. Patent No. 5,512,396). Applicant traverses the rejections. However, in light of the lengthy discussion above regarding Assisi, these rejections will not be discussed in detail. Applicant submits that the fundamental inapplicability of Assisi to the claimed embodiments, as discussed above, prevents the suggested combination of Assisi and Hicks. The suggested combination is unworkable and therefore cannot render claimed embodiments obvious. In addition, Applicant further submits dependent claims 14-15, 20-21, 29-30, and 35-36 are also allowable for at least the reason as depending from allowable base claims.

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Examiner Caputo, Lisa M.  
TC/A.U. 2876

Conclusion

While much more may be said to explain why Assisi, whether considered alone or in combination with DeVito or Hicks, cannot anticipate or render obvious the claimed embodiments, Applicant submits that for at least the foregoing reasons, the rejections have been overcome. Therefore, claims **1-50** are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,

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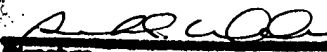
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